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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

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DR. JACQUELINE S. HART,
Petitioner

VS.

THE UNIVERSITY OF TEXAS, HOUSTON,
M.D. ANDERSON HOSPITAL AND
TUMOR INSTITUTE, ET AL,
Respondents

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents, The University of Texas, Houston, M.D. Anderson Hospital and Tumor Institute, et al, respectfully urge that the Petition for Writ of Certiorari be denied for the reasons set forth below:

STATEMENT OF ISSUES

1. This petition should be denied because Petitioner failed to establish a prima facie case of discrimination.

2. This petition should be denied because Respondent clearly articulated legitimate non-discriminatory reasons for not promoting Petitioner, assuming arguendo she has established a prima facie case.

STATEMENT OF THE CASE

Petitioner brought this suit in the United States District Court for the Southern District of Texas,

Houston Division (Civil Action No. H-79-915). A trial before the court was held on March 24, 1981. On March 30, 1981, the court concluded that Petitioner had failed to prove a prima facie case of sex discrimination or retaliation and had, therefore, failed to establish that the Respondents violated her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. The court further concluded that Petitioner failed to establish a cause of action under the Texas common law for either conversion or slander. Final judgment was entered March 30, 1981.

Petitioner filed notice of appeal to the Court of Appeals for the Fifth Circuit on April 21, 1981, No. 81-2156. The judgment of the district court was affirmed by the Fifth Circuit on August 23, 1982.

The district court correctly ruled that Petitioner failed to prove that she was denied promotions by Respondents based on her sex, female. Petitioner further failed to demonstrate she is as qualified or more qualified than any males that were promoted. Failing such proof, Petitioner has obviously failed to show a prima facie case of sex discrimination. *Texas Dept. of Community Affairs v. Burdine*, ____U.S.____. 101 S.Ct. 1089 (1981); *McDonald Douglas v. Greene*, 411 U.S. 792, 93 S.Ct. 817 (1973). The Court of Appeals held that there was not sufficient evidence to establish a prima facie case of discrimination based on sex. Even if Petitioner had established a prima facie case, the court of appeals found that there was sufficient evidence to rebut Petitioner's claim of discrimination.

Rule 52 of the Federal Rules of Civil Procedures states that "findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." The trial court had full opportunity to review the witnesses and evidence presented by both

parties and based on that opportunity, the district court found that there was insufficient evidence to establish a prima facie case of discrimination. While Plaintiff may disagree with the findings of the trial court and the inferences raised therein, her disagreement does not provide a basis for overturning the decision of the trial court. The Court of Appeals did not find that the findings made by the trial court were clearly erroneous, which is the standard of review the court of appeals is to follow, as stated in this Court's decision in *Pullman-Standard v. Swint*, 102 S.Ct. 1781 (1982).

The petition for writ of certiorari does not suggest that the decision of the Court of Appeals for the Fifth Circuit is in conflict with the decisions of any other federal court of appeals. The issues presented have been settled by the Supreme Court opinions in *McDonnell Douglas v. Green, supra* and *Burdine, supra.* None of the reasons contemplated or suggested by Rule 17 of the Supreme Court Rules is present to justify the grant of certiorari.

For the reasons stated, this petition should be denied.

Respectfully submitted,

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Executive Assistant
Attorney General

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Chief, State & County Affairs

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CERTIFICATE OF SERVICE

This is to certify that 3 true and correct copies of the foregoing Opposition to Petition for Writ of Certiorari have been sent to W. Patrick Resen, Attorney at Law, 2001 Salvio Street, Suite 13, Concord, California 94520, by United States Postal Service, Certified, Return Receipt Requested, this _____ day of January, 1983.

_____

DAVID R. RICHARDS